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PHOENIX, ARIZONA

July 16, 1970

DEPARTMENT OF LAW LETTER OPINION NO. 70-6-L (R-92)

REQUESTED BY: THE HONORABLE JOHN F. TAYLOR
Navajo County Attorney

QUESTIONS:

1. May portable classrooms be purchased by a school district from money budgeted in Category VIII, Capital Outlay?

2. If the answer to the above question is in the affirmative, must an election be held prior to the purchase of such buildings?

3. May a school district lease-purchase portable classrooms from capital outlay funds?

4. Is an election required prior to the purchase of portable classrooms from ten cent levy funds?

ANSWERS:

1. Yes.

2. Yes.

3. No.

4. No.

Several questions have arisen with respect to the purchase of portable classrooms and opinions rendered to date by this office have apparently created some doubts or misunderstandings, and this opinion will attempt to lay these questions to rest.

Question 1 was first answered by Attorney General Concurring Opinion No. 69-21-C, in which this office specifically approved the purchase of portable classrooms from Category VIII, Capital Outlay.

This office cautioned, at that time, and again reaffirms that such classrooms must truly be portable and moveable. The buildings cannot be affixed to the realty as any type of permanent structure, and must be capable of removal without damage to the land.

Within the statutory powers of the Board of Trustees, enumerated in A.R.S. § 15-442, elections are required only in the construction of school buildings and in the construction improvement and furnishings of buildings leased from the National Park Service. This section would not apply where the Board seeks to purchase a school building. A requirement of a prior election is also mentioned in A.R.S. § 15-445; however, lease-purchase agreements for portable classrooms entered into after July 1, 1968, do not require an election.

The final statute covering elections with regard to school property is A.R.S. § 15-1302. By its provisions, the School Board may and upon petition of school electors shall call an election to purchase school houses.

A question may be raised because of the use of the words "may" and "shall" in the initial paragraph. The use of both words need not be contradictory. The word "may" in statutes can be given mandatory interpretation depending upon the context in which it is used. State v. Mileham, 1 Ariz.App. 67, 399 P.2d 688 (1965).

A.R.S. § 15-1302 also covers the issuance of bonds for various school purposes and with regard to statutes governing the issuance of bonds, it has been the universal practice to interpret the word "may" as being mandatory, and in no case has there been a bond issue without prior approval of the electors.

It is, therefore, the opinion of this office that a purchase of a portable classroom by the School Board out of capital outlay funds must be preceded by an election of the qualified electors, but that a lease-purchase covered by A.R.S. § 15-445 requires no election.

A.R.S. § 15-442.C provides as follows:

> "Except as provided in § 15-445, the board of trustees shall not enter into any lease-purchase agreement. A lease-purchase agreement may be continued until the termination date thereof if such agreement was entered into before and is still in effect on July 1, 1968."

Therefore, although the Board may purchase portable classrooms from capital outlay funds, a lease-purchase agreement cannot be entered into which would provide for payment out of capital outlay.

Respectfully submitted,

Gary K. Nelson

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The Attorney General

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